

**AUCTIONEER BOARD  
MADISON, WISCONSIN  
APRIL 23, 2001**

**PRESENT:** Richard Lust, Marie Kohlbeck, Mark Shain, Marie Skic-Loy, Robert Massart; Ronald Bast, by teleconference; Robert Brandau (arrived at 9:35)

**STAFF PRESENT:** Secretary Herrera for a portion of the meeting; Cletus Hansen and Becky Fry; Division of Enforcement staff for portions of the meeting

**CALL TO ORDER**

The meeting was called to order at 9:17 a.m. by Richard Lust, Chair, upon confirmation that the public notice was timely given. A quorum of six members was present.

**AGENDA**

**MOTION:** Mark Shain moved, seconded by Robert Massart, to adopt the agenda, as published. Motion carried unanimously.

**MINUTES (2/26/01)**

**MOTION:** Marie Kohlbeck moved, seconded by Marie Skic-Loy, to approve the minutes, as written. Motion carried unanimously.

**ADMINISTRATIVE REPORT**

**Secretary Oscar Herrera**

Mr. Hansen distributed a copy of the March 30, 2001, Milwaukee Journal Sentinel article naming Oscar Herrera as Secretary to the Department and he introduced Secretary Herrera.

Secretary Herrera addressed the Board and gave a background on himself. Secretary Herrera acknowledged the importance of mandatory continuing education to the Board.

**Cletus J. Hansen**

Mr. Hansen addressed the reorganization of the Department and indicated that the licensing of both health and business professions has been combined; however, they have not been moved together at this point. He stated the organizational chart has been amended and would eventually be creating a Board Services Division.

• **Roster**

The Board received an updated copy of the February 2001 roster. Noted.

The Board discussed the term expiration of Marie Kohlbeck. Mr. Hansen indicated that she had served two terms and could not be reappointed. Mr. Hansen will advise the Governor's appointment secretary Ms. Kohlbeck expressed interest in being appointed as a public member of another board.

Richard Lust reminded the Board that the Statement of Economic Interest from the Ethics Board is due April 30, 2001.

- **Meeting Dates for 2001**

Meeting dates were rescheduled for every other month starting with June 25, 2001, with screening only on alternate months. Marie Kohlbeck indicated that she would not be available for the June 25, 2001 meeting.

- **To-Do List**

Mr. Hansen explained that issues that require follow-up are listed on the to-do list and will continue to be included in the agenda packets.

- **To-Pass Folder**

There was no information to be circulated in the To-Pass Folder.

### **FEES FOR RENEWAL OF REGISTRATION**

Gail Riedasch addressed the increase in the fees for renewal of registration and explained the formula used to arrive at renewal fees and assessed costs.

The Board expressed concern that penalty fees collected are not being used to offset renewal fees. Ms. Riedasch explained that this issue has been discussed on several occasions; however, the decision that resulted in the current practice prevailed. She said that, by statute, forfeiture money goes to the school fund. Assessed costs, however, belong to the Department.

### **LEGISLATIVE UPDATE**

#### **LRB-1135/2 Temporary Registration, Advertising, Auction-Related Services While Suspended or Revoked**

Mr. Hansen reviewed the fact that the Joint Committee for Review of Administrative Rules had expressed concern that the Department was exceeding its authority by not letting licensees who are suspended or revoked engage in activities that an ordinary citizen may engage in under the exemptions to the license law. Mr. Hansen further explained that the Committee Co-chairs indicated that they would allow the Board to continue with rule proposal, however, and suggested that the question be resolved by a statutory change.

Mr. Hansen advised that William Dusso, Legal Counsel, reviewed LRB-1135/2 and advised that the draft should be amended a bit, so it is sufficiently different from the current rule, so that, if the bill passes, the Department will not have to repeal its rule.

**MOTION:** Robert Massart moved, seconded by Mark Shain, that Mr. Dusso enhance the proposed bill as necessary to make it more stringent than the current administrative rule. Motion carried unanimously.

Mark Shain questioned the language in Chapter 480.24 (2m) (a) 10. (d), Stats., that says: “A person whose registration as an auctioneer or auction company has been suspended or revoked under sub. (2) may perform an activity specified in par. (b) only if the performance is required under a contract with an auctioneer or auction company that was entered into before the suspension or revocation.” Mr. Howden also express concern about this provision.

**MOTION:** Robert Massart moved, seconded by Mark Shain, to amend the language in the proposed language in s. 480.24 (2m) (a) 10. (d) Stats.. so it is similar to the current rule. Motion carried unanimously.

## **ADMINISTRATIVE RULES**

### **Mandatory Continuing Education**

Mr. Hansen indicated that he discussed with Secretary Herrera, the Board’s recommendation relating to mandatory continuing education and that Secretary Herrera requested more information on the effect of continuing education on consumers, auctioneers, and the Department. Mr. Hansen indicated that he would address these issues as they specifically pertain to auctioneers and would also send to Secretary Herrera any memos the former education administrator had sent to the previous Secretary.

The Board expressed the pros and cons of requiring testing after completion of continuing education.

Mr. Lust expressed the hope that a person who is credentialed as both a real estate agent and an auctioneer will be able to receive credit for both professions with one course.

The Board will continue to endorse the concept of mandatory continuing education; however; there was a difference of opinion on requiring a test at the end of the courses. Mr. Lust recommended appointing a committee to look further into the policies and procedures relating to continuing education. The Board discussed the qualifications of instructors of continuing education.

## **REVIEW OF AUCTIONEER CONTRACT**

The Board reviewed the revised contract used by Badger Auctioneers. Colleen Baird indicated that Theodore Fleisner has met the minimum requirements. There was concern that the issue of the authority of purchasing as opposed to bidding at the auction under RL 124.02 (3), had not been addressed. The Board indicated that in the present contract, authority had been given to bid and inflate the price, but there was no authority to purchase.

Mr. Lust indicated that Badger Auctioneers, with the current contract, would be violating the uniform commercial code s. 402.328 (4) Stats. In an auction without reserve, the owner (seller) or the auctioneer as an agent of the seller cannot bid.

The Board requested that Ms. Baird request that Badger Auctioneers include in their contract the authority to purchase along with the authority to bid at auctions. Ms. Baird will further review the contract with Mr. Fleisner’s attorney.

Gene Kleinert addressed the accounting issues of Badger Auctioneers and indicated that the company is currently in compliance and has been very cooperative.

## **MISCELLANEOUS INFORMATION/CORRESPONDENCE**

### **Notices of Denial: Renewal Applications**

The Board discussed the notice of denial for renewal of an application for real estate business entity, submitted by Auction Expo International and whether the denial was sent for auctioneer application renewal also, due to denial for delinquent taxes.

The Board requested that Mr. Hansen include in the Board meeting packets copies of Notices of Denial, relating to tax delinquency.

### **Correspondence with the National Auctioneers License Law Officials Association**

Noted

## **PRESENTATION OF PROPOSED STIPULATIONS BY DIVISION OF ENFORCEMENT**

### **Role of the Case Advisor**

Mr. Hansen informed the Board that Bill Dusso is trying to get consistency in the Department with the process of presenting stipulations and the presence and participation of the case advisor and prosecuting attorney during deliberations and the final vote on the matter.

## **NEW BUSINESS**

Mr. Bast recommended a letter of thanks be sent to Marie Kohlbeck upon resignation or replacement. Mr. Hansen said that the Department sends a letter and a plaque from the Governor's office upon replacement or resignation of a member.

## **PUBLIC COMMENTS**

None

## **RECESS TO CLOSED SESSION**

**MOTION:** Marie Skic-Loy moved, seconded by Mark Shain, to convene the meeting in Closed Session pursuant to Sections 19.85(1)(a), (b), and (f), Wis. Stats., to consider the licensing or discipline of a person licensed by the Department or the investigation of charges against such a person. Specifically, to deliberate on a stipulation. Motion carried unanimously by a roll call vote: Robert Brandau-yes; Marie Kohlbeck-yes; Marie Skic-Loy-yes; Mark Shain-yes; Robert Massart-yes; Ronald Bast-yes; Richard Lust-yes.

Open Session recessed at 11:17 a.m.

The Board deliberated on monitoring issues.

### **ADJOURN CLOSED SESSION**

**MOTION:** Robert Brandau moved, seconded by Mark Shain, to adjourn the Closed Session and to reconvene in Open Session at 11:33 a.m. Motion carried unanimously.

### **VOTING ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION MONITORING ISSUES**

#### **Harry Davis & Company (Pittsburgh, PA)**

**MOTION:** Mark Shain moved, seconded by Marie Holbeck, to allow to renew his personal registration. Motion carried unanimously.

#### **Gene J Finz (Albuquerque, NM)**

**MOTION:** Ronald Bast moved, seconded by Marie Skic-Loy, to issue a summary suspension in accordance with the Stipulation and to turn this case over to the Department of Justice. Motion carried unanimously.

### **OTHER ITEMS AS AUTHORIZED BY LAW**

Mr. Bast requested that a per diem form be sent to him.

### **ADJOURNMENT**

**MOTION:** Robert Brandau moved, seconded by Mark Shain, to adjourn the meeting at 11:35 a.m. Motion carried unanimously.